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File No. ces/46

Legal Department

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Subject:—

Opinions Under the

Bombay Public Conveyances

Act 1920

5/6

O. Public Conveyances/46

File No.

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383-A

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F.A.

The question for R.L.A.'s consideration is whether in view of the specific provision contained in section 18 of the Bombay Public Conveyances Act, 1920, the existing practice of fixation of rates of fares for hiring public conveyances by the Commr. under sub-section (4) of section 36, is ~~xxxxxx~~ legally valid.

Sub-section (2) of section 1 of the Bombay Public Conveyances Act, 1920, enacts that this section and sections 36, 38 and 39 extend to the whole of the Presidencyof Bombaywhile the rest of the Act extends, subject to the provisions of section 36, only to the city of Bombay. The power to extend the provisions ~~xxxxx~~ of the Act (other than sections 36, 38 and 39) to any area other than the Cityof Bombay, is conferred bysub-section (1) of section 36, on the Provincial government or the Commr. of a division. Sub-section (2) provides that whene this Act or any portion thereof is extended to anysuch area, the Provincial Government or the Commr. of the division as the case maybe,-

only to the city of Bombay. The power to extend the provisions of the Act (other than sections 36, 38, 39)

(a) shall by notification appoint some person to perform the functions assigned by this Act to the Commr. of Police, The functions assigned to the Commr. of Police are specified in sections 3 to 21

Sub-section (4) provides that when this Act or any portion thereof is extended to any area, the power of-

(i) fixing fees,

(ii).....

(ii) appointing and abolishing stands, and

(iii) making rules,

shall be exercised, subject to the approval of the Provincial Government or the Commr. of the Division, as the case maybe.

The Bombay Public Conveyances Act, 1920, provides for three clauses of licences, namely:-

(a) for a public conveyance (sections 3 to 7);

(b) for a horse (sections 8 to 10), and.

(c) for driving a public conveyance (sections 11 to 14).

The Act provides for the fees to the charged for the grant or renewal of a licence for a public conveyance (see section 7), for grant or renewal of a deliver's licence (section 14), and for the cost of inscription under section 6(2). Consequently under section 36(4) the power of the person appointed to perform the duties assigned to the Commr. of Police in regard to fixation of fees, will be those under section 6(2) read with section 35(1)(a), and under sections 7 and 14 but the fixation of fees is distinct from "fixation of the legal rates of fares for public conveyances" under section 18. As presumably the provisions of section 18 of the Act have been extended to Kaira, the person appointed under section 36(1) of the Act to perform the functions of the Commr. of Police, Bombay under that section, can fix the legal rates of fares for public conveyances only subject to the conditions of previous publication and the previous sanction of the Provincial Government. The view expressed by the D.M., Kaira and concurred in by the Commr., N.D. is therefore correct.

Reply may be-

"Seen and returned.

The view expressed by the D.M., Kaira, and concurred in bythe Comm., N. D. in his letter No. P.O.L. 116-II dated 28-3-1946 at p. 9 is correct."

Sd/-
1/7

A.A.L.R. I agree.

~~Ecdcct.~~ Sd/- ~~1/7/46~~
2/7

R.L.A.

Sd/-
10/7/46.

.....

Office of the R.L.A.

Seen and returned.

The view expressed by the District Magistrate, Kai
and concurred in by the Commissioner, Northern Divisio
in his letter No. P.O.L.116-II, dated 28th March 1946
at page 9 is correct.

Sd/-
11/7/46.

Remembrancer of Legal Affairs.

U.R.to H.D.No. 4967, dated the 12th July 1946.

RHB.
10.7.

Office of the R.L.A.

The Superintendent of Police, Sholapur has raised the question whether the licensee of a bullock-cart who permits his cart to be drawn by bullocks not passed bythe District Superintendent of Police or by a Police Officer authorised by him can be prosecuted under section 24 of the Bombay Public Conveyances Act, 1920. The District Government Pleader, Sholapur who was consulted in the matter observes:

> "While defining 'public conveyance' in section 2(b) of the Bombay Act XXVII of 1920, it is said to mean 'a wheeled vehicle drawn byone or more horses or other animals or by hand etc.'
>
> The words 'other animals or by hand' are omitted in section 8(1) and section 24 of the Act and hence the question arises whether it is necessaryto suggest an amendment in sections 2(c) and 11(1) and 24 of the Act.
>
> It is arguable that looking to the definition of 'public conveyance' as given in section 2(b) wherever the word 'horse' appears in the Act it does include the words 'or other animals or byhand'. This argument is plausible applying the principle of ejusdem generis."

The R.L.A. is requested to advise whether the view of the District Government Pleader, Sholapur is correct and whether the Act requires to be amended.

The view taken bythe District Government Pleader, Sholapur is not correct. He has relied on the definition of 'public conveyance' in section 2(b) of the Bombay Public Conveyances Act, 1920as it stood before it was amended by Bombay Act XVIII of 1943. "Public Conveyance" as defined in the amended section 2(b) means any wheeled vehicle drawn or propelled on roads and used for the purpose of plying for hire for the conveyance of persons or goods but does not include a motor vehicle as defined in the Motor Vehicles Act, 1939 or a vehicle running upon fixed rails. According to the scheme of the Act it appears to provide for the licensing of public conveyances, horses and drivers (see sections 3(1),8(1) and 11(1) of the Act). The Act no where contemplates the licensing of bullocks although the licensi

licensing of carts drawn bybullocks is imperative. Consequently the principle of ejusdem generis can have no application and it would not be permissible to import into sections 8(1) and 24 the words "or other animals or byhand" as suggested by the District government Pleader, Sholapur.

If government considers it necessary to provide for the licensing of bullocks also the Act requires to be suitably amended.

Sd/-
28/8/46
Remembrancer of Legal Affairs.

U.R.to H.D.No.6055, dated the 3rd September 1946.

A.A.L.R. (After issue) Sd/-
6/9.

RHB.
10.7.